

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

IAN ALEXANDER PINCOMBE,

Defendant.

Case No. 2:14-cr-00178-JAD-GWF

**REPORT AND
RECOMMENDATION**

This matter is before the Court on Defendant's Motion to Dismiss for Lack of Jurisdiction (ECF No. 111), filed on February 9, 2017. The Government filed its Response (ECF No. 115) on February 13, 2017.

BACKGROUND

The indictment in this case charges Defendant Ian Alexander Pincombe with coercion and enticement in violation of 18 U.S.C. § 2422(b); possession of child pornography in violation of 18 U.S.C. § 2252A(a)(5)(B); and receipt or distribution of child pornography in violation of 18 U.S.C. 2252(a)(2) & (b)(1). *See* ECF No. 94. Defendant argues that the Court lacks "jurisdictional authority over the exact geographical location where the alleged criminal activity mentioned in the indictment took place." *See Motion*, (ECF No. 111), pg. 1. He appears to argue that the Court does not have jurisdiction to hear this matter and that the United States of America does not have the authority to prosecute this matter. *Id.* at pg. 3-8. Defendant seeks dismissal and requests that the Court establish its jurisdiction. *Id.* at pg. 7. The Government argues that Defendant's contentions lack merit as courts are authorized to hear criminal cases pursuant to 18 U.S.C. § 3231. *See Response*, (ECF No. 115), pg. 2-4. The Government also argues that the United States Attorney is vested with the delegated authority to represent the United States pursuant to Article II, § 2 of the

1 United States Constitution. *Id.*

2 DISCUSSION

3 Rule 12 of the Federal Rules of Criminal Procedure governs pleadings and pretrial motions.
 4 It permits a criminal defendant to contest jurisdiction in a motion to dismiss. *See* Fed. R. Crim. P.
 5 12(b)(2). In deciding a motion to dismiss under Rule 12, the “court is bound by the four corners of
 6 the indictment.” *United States v. Boren*, 278 F.3d 911, 914 (9th Cir. 2002). The court must also
 7 accept the facts alleged in the indictment as true. *Id.* The court may not invade the province of the
 8 jury and decide by pretrial motion matters “of the general issue.” *United States v. Shortt*
 9 *Accountancy Corp.*, 785 F.2d 1448, 1452 (9th Cir. 1986). When deciding a pretrial motion brought
 10 under Rule 12, the court’s role is merely to determine whether the indictment is facially valid, and
 11 not whether either party is entitled to judgment on the pleadings. *See, e.g. United States v.*
 12 *Titterington*, 374 F.3d 453, 457 (6th Cir. 2004). “A motion to dismiss the indictment cannot be
 13 used as a device for a summary trial of the evidence” *United States v. Jensen*, 93 F.3d 667, 669 (9th
 14 Cir.1996).

15 An indictment is sufficient if it contains the elements of the offense charged and fairly
 16 informs the defendant of the charge against which he must defend and enables him to plead an
 17 acquittal or conviction to bar a future prosecution for the same offense. *United States v. Hill*, 279
 18 F.3d 731, 741 (9th Cir.2002) (citing *Hamling v. United States*, 418 U.S. 87 (1974)). An indictment
 19 is generally sufficient if it sets forth the offense in the words of the statute itself as long as “those
 20 words of themselves fully, directly, and expressly, without any uncertainty or ambiguity, set forth all
 21 of the elements necessary to constitute the offenses intended to be punished.” *Hamling*, 418 U.S. at
 22 117.

23 The Commerce Clause empowers the legislative branch to criminalize conduct. U.S. Const.
 24 art. I, § 2, cl. 3. Once Congress criminalizes conduct, 18 U.S.C. § 3231 grants courts jurisdiction to
 25 hear prosecution and states as follows:

26 The district courts of the United States shall have original jurisdiction, exclusive of
 27 the courts of the States, of all offenses against the laws of the United States.

28 18 U.S.C. § 3231.

1 If a federal grand jury returns an indictment, which charges the defendant with violations of
 2 federal law, then 18 U.S.C. § 3231 empowers the court to hear a criminal case and impose a
 3 sentence. *United States v. Wright*, No. 2:14-CR-357-APG-VCF, 2015 WL 4640420, at *2 (D. Nev.
 4 Aug. 4, 2015) (citing *United States v. Longoria*, 259 F.3d 363 (5th Cir.2001), on reh'g en banc, 298
 5 F.3d 367 (5th Cir.2002)). On May 21, 2014, a federal grand jury returned a three-count indictment
 6 that included criminal forfeiture allegations against Defendant. *See* ECF No. 13. On September 13,
 7 2016, a federal grand jury returned a three-count superseding indictment charging Defendant with
 8 coercion and enticement in violation of 18 U.S.C. § 2422(b); possession of child pornography in
 9 violation of 18 U.S.C. § 2252A(a)(5)(B); and receipt or distribution of child pornography in
 10 violation of 18 U.S.C. 2252(a)(2) & (b)(1). *See* ECF No. 94. Accepting the facts of the indictment
 11 as true, the indictment is sufficient and charges Defendant with violations of federal law. The
 12 Court, therefore, has jurisdiction under 18 U.S.C. § 3231.

13 Defendant cites to 40 U.S.C. § 255 and appears to argue that the federal government does not
 14 have territorial jurisdiction to prosecute the case against him. *See Motion*, (ECF No. 111), pg. 5-8.
 15 Defendant failed to set forth any relevancy regarding the ownership and management of federal
 16 public lands to this matter. 40 U.S.C. § 255 describes how the federal government may acquire
 17 exclusive jurisdiction over land that it purchases. *United States v. Williams*, 84 F. App'x 678, 680
 18 (7th Cir. 2003). It does not divest the government of jurisdiction to enforce federal law on land that
 19 is not owned by the federal government. *Id.* Therefore, dismissal is not warranted.

20 CONCLUSION

21 Defendant is charged with violations of federal law and, pursuant to 18 U.S.C. § 3231, the
 22 Court has jurisdiction over this matter. The federal government is authorized to prosecute
 23 Defendant for the alleged crimes and dismissal is not warranted pursuant to 40 U.S.C. § 255.

24 RECOMMENDATION

25 **IT IS RECOMMENDED** that Defendant's Motion to Dismiss for Lack of Jurisdiction
 26 (ECF No. 111) be **denied**.

27 NOTICE

28 Pursuant to Local Rule IB 3-2, any objection to this Finding and Recommendation must be

1 in writing and filed with the Clerk of the Court within fourteen (14) days. The Supreme Court has
2 held that the courts of appeal may determine that an appeal has been waived due to the failure to file
3 objections within the specified time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985). This circuit has
4 also held that (1) failure to file objections within the specified time and (2) failure to properly
5 address and brief the objectionable issues waives the right to appeal the District Court's order and/or
6 appeal factual issues from the order of the District Court. *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th
7 Cir. 1991); *Britt v. Simi Valley United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).

8 DATED this 2nd day of March, 2017.

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11 GEORGE FOLEY, JR.
12 United States Magistrate Judge
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